

May 22, 1998

D.T.E. 98-14

Petition of over twenty (20) customers of Boston Edison Company, pursuant to M.G.L. c. 164, § 93, requesting the Department of Telecommunications and Energy to investigate the price of electricity sold and delivered by the Company to all customers in the Commonwealth of Massachusetts, and to order a reduction in price of electricity for all such customers, and a rebate for past excessive charges.

I. INTRODUCTION

On January 30, 1998, pursuant to G.L. c. 164, § 93, over twenty customers ("Customers") of Boston Edison Company ("BECo" or "Company") filed a petition ("Petition") with the Department of Telecommunications and Energy ("Department") requesting that the Department (1) investigate the price of electricity sold and delivered to BECo customers; (2) order a reduction in the price of electricity for BECo customers, and (3) order a rebate to BECo customers for past excessive charges (Petition at 1).¹ The Customers request that the Department reduce BECo's 11.75 percent return on equity to reflect the present downward trend in electric rates across the country (id. at 2-4). According to the Customers' calculations, BECo's actual return on equity was 12.2 percent in 1996 (id. at 4). The Customers further request that the Department lower BECo's rates to form the basis for the calculation for further rate reductions pursuant to Chapter 164 of the Acts of 1997 (the "Restructuring Act").² The Customers suggest that the Department not discount the rates BECo had in effect during August, 1997, but, instead, use another basis to calculate BECo's reduced rates.

¹The Associate Director of the Campaign for Fair Electric Rates filed the Petition on behalf of the Customers.

²On November 25, 1997, the Governor signed into law Chapter 164 of the Acts of 1997, entitled, "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein." Among other things, the Restructuring Act requires electric distribution companies to provide a rate reduction of 10 percent for customers choosing the standard service transition rate from the average of undiscounted rates for the sale of electricity in effect during August, 1997, or such other date as the Department may determine. St. 1997, c. 164, § 193 (G.L. c. 164, § 1A(a)).

II. ANALYSIS AND FINDINGS

The Department is authorized by G.L. c. 164, § 93 to investigate a complaint of twenty or more customers of an electric company "as to the quality or price of the ... electricity sold and delivered." In their Petition, the Customers raise two substantive issues:

(1) whether the Department should order a rebate of alleged excessive rates in 1996 and 1997; and (2) whether the Department should reduce the Company's rates to a level that would allow a fair and reasonable rate of return on common equity. Procedurally, the Customers request that the Department hold a hearing on the Company's rates. For the reasons stated below, the Department dismisses the Customers' Petition.

The Department first addresses the Customers' request for a rebate of amounts paid for electric service in 1996 and 1997 as a result of alleged excessive rates. Pursuant to G.L. c. 164, § 94, an electric company is required to file

schedules showing all rates, prices and charges to be thereafter charged or collected within the commonwealth for the sale and distribution of ... electricity [N]o different rate, price or charge shall be charged, received or collected by the company filing such a schedule from those specified in the schedule then in effect.

In Boston Edison Company, D.P.U. 92-92 (1992), the Department³ approved a settlement agreement that allowed certain rates to become effective. Those rates remained in effect during 1996 and 1997.

In their Petition, the Customers do not allege that they were charged rates for electric service that did not conform with rate schedules on file with the Department. Rather, the Customers question the propriety of the filed rates set in D.P.U. 92-92. A customer may not, in

³At that time, the Department was known as the Department of Public Utilities.

an action to recover alleged overcharges, attack the propriety or reasonableness of electric rates on file if he has actually been charged the correct, tariffed rate. Metropolitan District Commission v. Department of Public Utilities, 352 Mass 18, 27 (1967). Further, it is well established that the Department lacks the authority to award reparations. Id.; Fryer v. Department of Public Utilities, 374 Mass. 685, 690 (1978); Newton v. Department of Public Utilities, 367 Mass 667, 667-680 (1975). Therefore, the Department, taking the Customers' assertions as true and construing them in their favor, determines that on this issue, the Customers have failed to state a claim upon which relief can be granted. See Riverside Steam and Electric Company, D.P.U. 88-123, at 26-27 (1988).

Neverthelss, we will still address the substantive issue of whether the Company's rates ought to be reduced, as alleged by the Customers. Two days before the Petition was filed, the Department approved BECo's restructuring settlement as consistent or substantially compliant with the Restructuring Act and in the public interest. Boston Edison Company D.P.U./D.T.E. 96-23, at 8, 9, 18-20, 73 (1998).⁴ The Department approved the tariffs the Company filed in compliance with D.P.U./D.T.E. 96-23 on February 27, 1998. These revised rates became effective on March 1, 1998.

⁴On July 9, 1997, the Company, together with several other parties, submitted an Offer of Settlement of electric industry restructuring issues ("Settlement"). The Department commenced its review of the Settlement pursuant to G.L. c. 164, §§ 76 and 94 and 220 C.M.R. §§ 1.00 et seq. The Department allowed 28 petitioners full intervenor status and five petitioners limited participant status. The Department conducted a public hearing on August 13, 1997 and five days of evidentiary hearings between September 15 and September 29, 1997. Following the enactment of the Restructuring Act, the Department issued a notice seeking comments on whether the Settlement complies or is consistent with the Restructuring Act. The Committee for Fair Electric Rates was among those who filed comments.

The issues of BECo's allowed return on equity and discounted rates were raised on the record in D.P.U./D.T.E. 96-23 (see RR-DPU-15; Tr. 4, at 44-46; Low Income Intervenors Reply Brief at 13). The Department found that the use of base rates in effect for the entire year of 1997, and the periodically-adjusted charges in effect in November 1996 for calculating the baseline revenues in the Settlement, results in a 10 percent rate decrease and therefore substantially complied or was consistent with the requirements of the Restructuring Act and is in the public interest. Id. at 30. Further investigation of the issues raised in the Petition would require the Department to reconsider our findings in D.P.U./D.T.E. 96-23. The Customers lack standing to file a motion for reconsideration.⁵ See Boston Edison Company, D.P.U./D.T.E. 96-23-A (1998); see also 220 C.M.R. § 1.11(10). Accordingly, the Department finds that the issues raised in the Petition have been given due notice, hearing, and consideration in D.P.U./D.T.E. 96-23.

Given that the Customers' Petition fails to state a claim upon which relief may be granted and inappropriately requests reconsideration of issues litigated and decided, the Department dismisses the Petition and closes this investigation. Based upon these determinations, the Department concludes that a hearing in this matter is not warranted.

⁵Even if the Department were to consider the Petition as a Motion for Reconsideration, the Petition does not bring to light any previously unknown or undisclosed fact that would have had a significant impact upon D.P.U./D.T.E. 96-23. See Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983).

III. ORDER

Accordingly, after due consideration it is:

ORDERED: That the Petition be and is hereby DISMISSED and that this investigation be and is hereby closed.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).